

ORIGINAL

U.S. COURT OF APPEALS
FOR VETERANS CLAIMS

APR 25 2016

RECEIVED

Docket No: 15-4524

Donald R. Bullock, Appellant

v.

Robert A. McDonald
Secretary of Veterans Affairs, Appellee

Appellant's Informal Brief

Type or legibly write your answers to each question. If the Court cannot read your handwriting, your brief may be returned to you.

1. If there is more than one issue listed on the first page of that Board decision, which Issue(s) are you appealing?

Please note that if you choose not to list an issue here, the Court might not review that issue.

My appeal was as follows:

Increase rating for PTSD—Record Before the Agency (R.) 263 & 289

Questions 2 – 6 ask you for information regarding the issues you believe were incorrectly decided by the Board.

2. For each issue(s) you listed in Question 1, did the Board incorrectly state any facts?
Yes X No

If yes, what are the correct facts? Please list the page number(s) from the Record Before the Agency (RBA) that support your argument.

The BVA made finding as follows:

The Board acknowledges that throughout the relevant time, the Veteran's GAF

Scores have ranged from 39 (lowest) to 60 (highest).....

See Attachment for #2

3. Are there any documents in the Record Before the Agency (RBA) that support your claims?

Yes ☒ No ☐

If yes, what are those documents? Please list the page number(s) in the RBA where they can be found and explain why you think they support your claim.

My treating psychiatrist has made finding that my PTSD caused major Impairment (R.) 509.

The C&P Examiner has made finding that my PTSD caused moderate Impairment (R.) 599.

The BVA made finding that my PTSD only caused mild impairment.

There is no evidence in the record that supports the mild impairment of 30%, what so ever.

4. Did VA fail to obtain any documents identified by you or your representative or mentioned in the Record Before the Agency (RBA) when it was gathering evidence for your case?

Yes ☐ No ☒

If yes, list the page number(s) of the RBA that show that these documents exist and explain:

- How each document relates to your claim(s)
- Why each document is important to your case

The Court cannot consider documents that were not before the Board. Also, please do not attach any pages from the RBA.

5. To your knowledge, did the Board fail to apply or misapply any law, case, or regulation?

Yes ☒ No ☐

If yes, what is that law, case or regulation and/or how should the Board have applied it?

38 U.S.C. § 5107(b) & 38 C.F.R. 3.303 should have been applied I was entitled to the benefit of the doubt. I was entitled to have my claim decided on "all" the evidence.

6. Do you think that the Board decision is wrong for any other reason(s)?

Yes X No

If yes, what are those reasons(s)? Please list the page number(s) from the Board Before the Agency (RBA) that support your argument.

See Argument at (R.) 289.

Finally, Questions 7 – 8 ask you for information that will help the Court process your case:

7. What action do you want this Court to take?

Grant at least 70% rating for my PTSD.

8. If you needed extra pages to answer the questions above, how many extra pages did you attach to this form? 2

Please remember that your brief cannot exceed 30 pages total (including this form). Do not attach any pages from the Record Before the Agency (RBA).

On any attached pages, make sure to include your name and your Court docket Number, which is listed at the top of each page of this form.

Please sign and date this form after you have finished completing it:

Date: 4/21/16

Appellant's Signature



ATTACHMENT for #2

DONALD R. BULLOCK

DOCKET NO: 15-4524

Such scores take into account all of the medical evidence of record, lay and objective, including Veteran's moderate difficulty in social and occupational functioning, his occasional panic attacks, and his nightmares, flashbacks and occasional visions in his periphery.....

The Board is aware that GAF scores ranging from 39 to 45 were assigned, Indicative of "severe" symptoms to include suicidal ideations and an inability to hold a job. However, such low scores were only assigned by the Veteran's private physician,.....(R.) 12.

In this case, the BVA presents an argument that conflicts with the Secretary of the VA and the Veterans Court, as noted in *Cox v. Nicholson*, 20 Vet. App. 563, 568 (2007), as follows:

"The Secretary argues that the examinations were adequate because, among other things, this Court affords no greater deference to a physician versus other healthcare professionals.....We have never required, nor do we intend to do so here, that medical examinations under section 5103A only be conducted by physicians. *See, e.g., Goss v. Brown*, 9 Vet. App. 109, 114 (1996) (recognizing that nurses' statements regarding nexus were sufficient to make a claim well grounded); *Williams v. Brown*, 4 Vet. App. 270, 273 (1993) (finding opinions of a VA registered nurse therapist competent medical testimony and requiring the Board to provide reasons or bases for finding those opinions unpersuasive)."

* * * * *

"Mr. Cox argues that VA regulation 38 C.F.R. § 3.159(a)(1) provides that "a nurse [practitioner] is not competent to provide 'competent to provide "competent medical evidence' in the form of a medial examination and medical diagnosis." Appellant's Br. at 13. That argument is not supported by the regulation. *See* 38

ATTACHMENT for #2 – cont'd

DONALD R. BULLOCK

DOCKET NO: 15-4524

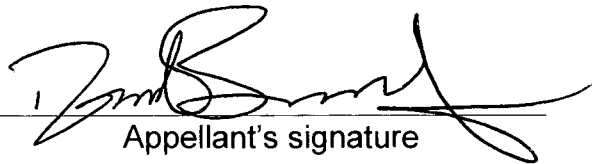
C.F.R. § 3.159(a)(1) (2006). Under that regulation, “competent medical evidence means evidence provided by a person who is qualified through education, training, or experience to offer medical diagnoses, statements, or opinions.” *Id.* A registered nurse practitioner, such as the one who conducted Mr. Cox’s June 2001 back and abdominal examination, is one who, by definition, has “advanced education and clinical training in a specialized area of health [c]are ... [and] can diagnose, prescribe, and perform procedures.” *DORLAND’S ILLUSTRATED MEDICAL DICTIONARY* C 1294 (30th ed. 2003). A nurse practitioner, having completed medical education and training, thus fits squarely into the requirement of § 3.159(a)(1) as one competent to provide diagnoses, statements, or opinions. We hold that VA may satisfy its duty to assist by providing a medical examination conducted by one able to provide “competent medical evidence” under § 3.159(a)(1).”

Under the Secretary’s argument and the Veteran’s Court Mandate, many years of treatments cannot be disregarded just because Dr. Jabbour is a private treating psychiatrist.

CERTIFICATE OF SERVICE

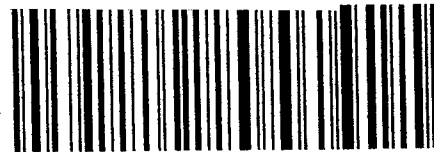
I certify under penalty of perjury under the laws of the United States of America that on **April 21, 2016**, a copy of this Informal Brief was mailed, postage prepaid, to:

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Appellant's signature

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